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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,660	01/15/2004	John G. Fischer	JGF 02775 PTUS	5884

32233 7590 06/09/2005

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EXAMINER

LIQU, JONATHAN

ART UNIT	PAPER NUMBER
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2672

DATE MAILED: 06/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/758,660

Applicant(s)

FISCHER, JOHN G.

Examiner

Jonathan Liou

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01/17/2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 January 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Claim 9 is depended on claim 1; however, there is no “step of associating the contest value to a representative animated graphic file” appears on claim 1. Therefore, claim 9 is rejected because the description of claim 9 is vague and indefinite.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 1-4, 6-8 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Reese U.S. Pat. 6,236,980 B1.
6. In regards to claim 1, Reese teaches the “Code” and ranking of the performance of the products, which includes a first product, a second product, and so on...(see col 17, 18.) Hence, he demonstrated that determining a first and second product value

representing the product's performance recited in the claim 1. Then, he teaches that the calculation of the performance statistics for the recommendations (products) (see col 21-24, and 39-40.) Hence, Reese shows solving for a contest value between the first product value and the second product value. Further, Reese shows that a performance data set table and display the statistics of the performance (see Fig 8-11, and col 24 and 40.) Therefore, Reese also shows selecting an animated contest file by relationship to the contest value and providing a display for the contest file as recited in the claim 1.

7. In regards to claim 2, Fig. 8c, 9c, and 10c of Reese reference show that a range of contest values are associated with an animated contest file.

8. In regards to claims 3-4, the method of Reese teaches that an access to the information reports, which can be the performance recommendations statistics, on a web page for initiation by internet users and displaying the reports on a web page for viewing by internet users (see Fig 3, col 12, 13.)

9. In regards to claim 6, Reese shows that the statistical representations of the products' performance for a plurality of measurements of the product's performance (see Fig 8-11, and col 23 and 24.)

10. In regards to claim 7, Reese shows the multiple statistical representations of the products' performance (see Fig 9b, 10b, 11b, and col 30-31.)

11. In regards to claim 8, Reese teaches a smile index, which attempts to numerically describe the pleasantness of each of the recommendations stored in the

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data storage means (see col 6, lines 56-63.) The smile index observes the qualitative test result and quantifying the results on a numerical scale (see col 22.)

12. In regards to claim 10, Reese shows the graphic symbol can be used to demonstrate the products' performance ranking (see col16, lines 45-50.) Therefore, the method of Reese also comprises a graphically identifying an animated representative of the product.

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claim 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reese U.S. Pat. 6,236,980 B1, and in view of Mendes, Jr. U.S. Pat 6,450,889 B1.

15. In regards to claims 11-12, Reese teaches determining the product value representing the products' performance and displaying an animated contest file as the same rationale as claim 1 in the office action. Reese did not show the product value is associated with the animated character performance. Mendes, Jr. shows the product value is associated to a performance variable of an animated character and the product value is associated to an animated character performance, and a contest file is displayed.

Reese teaches a first product value representing a first product's performance and a second product value representing a second products' performance as the same rationale for claim 1 in the office action. Mendes, Jr. teaches the input value to an animated character performance by using the racing car example. Mendes, Jr. shows that analyzing the first and second players' input signal (value) from each feedback device and make a determination of performance of each, and he depicts that the signal (value) increases as the performance of a player increases (see col 5-6 Mendes, Jr.) Hence, he teaches the same scope of functions that associating the first/second product value to a first/second animated character performance recited in the claim 11. Mendes, Jr. also shows that the performance depends on the variable speed. Therefore, he also teaches that the first/second product value is associated with a performance variable of a first/second animated character recited in claim 12. Further, he also shows that the performance of competing players can be measured and displayed (see col 3, lines 16-18 Mendes, Jr.) Therefore, Mendes, Jr. teaches displaying an animated contest between the first animated character and the second animated character as recited in the claim 11. And, Reese also shows displaying an animated contest in his method. The prior art, which have mentioned in the specification of the application, gives an example of taste testing of carbonated beverages, that teaches the motivation of presenting an animated character to associate with the product value (see sec [0007], page 3. specification.) Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add the step of associating the product value to a performance (variable) of an

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animated character to Reese's design because it can give the viewer an animated impression of the product rather than the numerical performance values of the product. Moreover, the prior art does show such invention has been presented (see sec [0007], page 3. specification.)

16. In regards to claim 13, Reese teaches the determining the product value representing the product's performance on a test as the same explanation for claim 1 in the office action. He also teaches adding the product value to a database of other product values of other product performance on the test (see col 16-18 Reese.) He also teaches the aggregated and averaged performance and ratio, which is a statistical numerical representation of the database (see col 21-23 Reese.), and he also gives the formula that solving for a contest value between the product value and the statistical numerical representation (see col 41-55 Reese.) Mendes, Jr. teaches that associating the first/second contest value to a performance variable of a first/second animated character and displaying an animated contest between the first animated character and the second animated character, as explained for claim 12 in the office action. Following the same rationale, basis, and motivation that have been explained in claim 1 and 11-12; Reese's method in view of Mendes, Jr.'s teaching would have shown all the limitation recited in the claim 13.

17. Claim 5 rejected under 35 U.S.C. 103(a) as being unpatentable over Reese as applied to claim 1 above, and further in view of Alberts.

Reese teaches the step of solving for a contest value between the first product value to the second product value that explained for claim 1 in the office action.

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However, the reference of Reese calculating the contest value is different than the method recited in the claim 5. Alberts shows determining the ratio value by dividing the product value to the highest product value (see col 5, lines 7-18 Alberts.) The method of calculating ratio value in the reference of Alberts is the same as the limitations recited in the claim 5. Although Reese teaches the different method to calculate the ratio, it provides the same scope of finding the contest value for the products. Since Reese teaches all the limitation recited in the claim 1 and Alberts provides alternate method of calculating the statistics of Reese's design, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Reese's design in view of Alberts' teaching because dividing the specifically product value by the highest product value could help to see how good of comparison in the statistics of this specifically product value to the best product value.

Conclusion

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited to further show the state of the art with respect to a method of displaying product and service performance data in general:

U.S. Pat. No. 6,502,076 B1

U.S. Pat. No. 6,341,269 B1

U.S. Pat. No. 6,243,076 B1

U.S. Pat. No. 6,285,380 B1

U.S. Pat. No. 6,300,959 B1

The following patents are cited to further show the state of the art with respect to associating the product to animate characters in general:

U.S. Pat. No. 6,319,121 B1

U.S. Pat. No. 6,340,330 B1

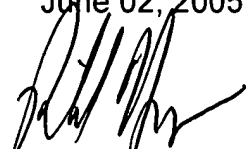
U.S. Pat. No. 6,354,940 B1

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan Liou whose telephone number is 571-272-8136. The examiner can normally be reached on 8:00AM ~ 5:00PM Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Razavi can be reached on 571-272-7664. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jonathan Liou

June 02, 2005

RICHARD HJERPE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600
6/3/05

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